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ALEXANDER L. STEVAS,
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. _____

STATE OF CALIFORNIA,
Petitioner,

-against-

UNITED STATES OF AMERICA,
MARTIN G. ROCK and IRENE E. ROCK,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

This case presents three issues which are central to the proper functioning of the federal court system:

1. Where California's sovereign interest in the bed of the Colorado River is fully litigated at trial and established by the District Court in its findings, does that Court have an affirmative obligation to set forth its resolution of that issue in the judgment?

2. Where a District Court's judgment fails to resolve issues properly and necessarily raised by California's Answer and Cross-Claim, is that judgment final or appealable?

3. Where California is joined by the United States as a party to litigation because of the common boundary between her sovereign interest in the bed of the Colorado River and federally owned uplands, and where the State's sovereign interest in the riverbed is specifically alleged in an answer and cross-claim, established at trial, and reflected in the Court's findings, is that state entitled to a final judgment on the question?

Petitioner is appealing to this Court's power of supervision over federal courts to resolve these three issues. If these issues are not determined, the result will be an incomplete judgment and a waste of the time and expense of the litigants and the judiciary invested in this case. Furthermore, additional litigation will be required to decide these questions. This outcome is unnecessary and could be avoided by adding one paragraph to the District Court's Judgment. That paragraph would establish the location of, and California's sovereign interest in,

LIST OF PARTIES

The names of all parties appear in the caption of this case.

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Petitioner, the State of California, respectfully prays that a Writ of Certiorari issue to review the Memorandum Decision of the United States Court of Appeals for the Ninth Circuit entered in this case on December 15, 1982, rehearing denied January 14, 1983. That Memorandum Decision affirmed the Judgment of the United States District Court, Central District of California. The District Court determined that it had no obligation to decide the issues raised by California's Answer and

Cross-Claim, despite the fact California was joined as a necessary party to the litigation to resolve those issues.

OPINIONS BELOW

The Memorandum Decision of the Court of Appeals, which was not reported, was issued on December 15, 1982, in the case of *United States of America* v. *Martin G. Rock, et al.*, Nos. 82-5234 and 82-5257; a copy is attached hereto as Appendix A [1]. The Court's order of January 14, 1983 denying petitioners' Petition for Rehearing is attached hereto as Appendix B. The District Court's Decision, dated June 26, 1981, is unreported; a copy is attached hereto as Appendix C. The Findings of the District Court are attached hereto as Appendix D. The Judgment of the District Court, entered on December 28, 1981, is attached hereto as Appendix E. The District Court's Order Denying California's Motion to Amend the Judgment, filed February 9, 1982, is attached hereto as Appendix F.

JURISDICTION

The Judgment of the United States Court of Appeals for the Ninth Circuit was entered on December 15, 1982. The Circuit Court of Appeals denied a timely Petition for Rehearing on January 14, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Supreme Court Rules 17 et seq.

[1] Cross-appeals were submitted in this case by California and the private parties, Mr. and Mrs. Rock. This petition concerns the decision of the Ninth Circuit with respect to California's appeal, which is discussed in the second half of the Memorandum Decision.

STATUTES INVOLVED

Federal Rules of Civil Procedure, rules 54 and 15(b), are involved in this case and are set out verbatim in Appendix L.

STATEMENT OF THE CASE

I. JURISDICTION

A. District Court

This case was initiated by the United States against Mr. and Mrs. Rock to recover possession of certain uplands adjacent to the Colorado River. The District Court's jurisdiction was invoked under 28 U.S.C. § 1345.

B. Circuit Court of Appeals

As is outlined above, a central issue presented by this petition is the jurisdiction of the Ninth Circuit Court of Appeals. Only final judgments are appealable. (28 U.S.C. § 1291.) However, by sanctioning the District Court's conclusion that it need not decide the issues raised by California's Answer and Cross-Claim, the Court of Appeals has, in fact, determined that the District Court's Judgment is not final. (See discussion below.)

II. PROCEDURAL BACKGROUND

A. Pleadings

This case was commenced by the United States on February 3, 1971. The United States sued Mr. and Mrs. Rock for ejectment, rent, and damages. California was not named in the original compiaint filed by the United States. (Appendix G.)

The Rocks filed their Answer and Counterclaim

against the United States on April 30, 1971. (Appendix H.) The Rocks alleged, in their affirmative defenses, that the lands described in the United States' complaint at one time belonged to California as either school lands, swamp and overflowed lands, or sovereign riverbed lands. Although the Rocks claimed that they somehow acquired the property from California by adverse possession, they did not file a cross-claim against California.

In light of the allegations made by the Rocks, the boundary between the uplands and the bed of the Colorado River became a central issue in the case. California, as the owner of the riverbed, was a necessary party to this litigation. Consequently, the United States served California with the summons on May 31, 1973. (Appendix I.) California filed her Answer and Cross-Claim for Declaratory and Injunctive Relief on October 4, 1978. (Appendix J.) In her Answer and Cross-Claim, California sought the establishment of her sovereign rights in the riverbed wherever it is ultimately located.

First, in response to the contentions raised by the Rocks concerning the avulsive movement of the riverbed, California alleged that should the District Court find and conclude:

> ". . . that one or more avulsive changes have taken place in the Colorado River's location in the vicinity of the property in question [as described in the United States' complaint], any lands formerly underlying the River found to have been exposed and abandoned as a result thereof remain in the sovereign ownership of cross-complainant State of Califor-

nia, as alleged above, and remain subject to the public trust for the people of the State of California, as also alleged above."

Second, even if the District Court did not find an avulsive change in the river, California requested that her rights to the riverbed be established wherever it is ultimately located. California alleged:

"1. Defendant State of California is a sovereign state of the United States of America.

"2. At all times relevant herein and relative to the property in question, the Colorado River has been, was and is a navigable body of water.

"3. Upon its admission to the Union, defendant State of California became vested with, and by virtue of its sovereignty now owns, title to the bed of the Colorado River along its current position in the vicinity of the property in question from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side. Such sovereign ownership is held in trust for the people of the State of California."

Based on these allegations, California requested judgment in the alternative as follows:

"1. Establishing and declaring sovereign ownership in the State of California of the current bed of the Colorado River, in the vicinity of the lands in this action, from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side;

"2. Enjoining and barring forever the defendants and cross-defendants Martin Rock and Irene Rock from claiming any interest whatsoever in the current bed of the Colorado River in the vicinity of the lands

in this action, from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side;

"3. Establishing and declaring sovereign ownership in the State of California of those portions of the lands in this action which are within the bed of the Colorado River in its last natural position, from the centerline of the River to the high-water mark thereof on the California (westerly) side, in the event that this court finds and concludes that one or more avulsive changes have taken place in the course of the Colorado River in the vicinity of the property in question;

"4. Enjoining and barring forever the defendants and cross-defendants Martin Rock and Irene Rock from claiming any interest whatsoever in any lands, within the bed of the Colorado River in its last natural position, from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side, which lands are found and concluded by the court to have been the subject of avulsive changes in the course of the Colorado River in the vicinity of the property in question;"

California also requested costs of litigation and such further relief as the District Court considered proper. California's cross-claim was answered by the Rocks on or about October 24, 1978. (Appendix K.) The Rocks denied California's allegations and claimed an interest adverse to California's.

B. Trial

Trial in this matter took place before the Honorable Francis C. Whelan, Senior Judge of the District Court, Central District, on February 10, 11, 12, and 17, 1981.

California actively participated in the trial. She offered evidence and expert testimony to establish and preserve her sovereign rights to the western half of the Colorado Riverbed. California, the United States, and the Rocks each asserted a different theory as to the location of the riverbed. Indeed, the central factual issue litigated at trial was the location of the common boundary between the uplands and the riverbed. (See discussion below.)

C. Judgment and Findings by the District Court

On June 26, 1981, Judge Whelan issued his decision in this case in which he adopted the position of the United States as to the location of the river. The Court directed the United States to promptly serve and lodge proposed Findings of Fact, Conclusions of Law, and Judgment not inconsistent with its decision. (Appendix C.) On August 5, 1981, the United States lodged said documents. California filed objections to the Proposed Findings of Fact and Conclusions of Law and the Proposed Judgment on or about August 12, 1981. California argued *inter alia* that the Proposed Judgment was defective because it failed to establish and locate her interest in the riverbed.

On December 28, 1981, the Court filed the final Findings of Fact and Conclusions of Law and Judgment. (Appendices D and E.) Although the judgment did not resolve the issues raised by California's Answer and Cross-Claim, the findings of the District Court supported California's contention that she owned the westerly half of the riverbed.

Findings Nos. 14 through 19 outline the "Basis of Ownership in the State of California." (Appendix D.) These findings correctly conclude that California's sovereign interest in the bed of the Colorado River is between the middle of the channel (Finding No. 15) and the ordinary high water mark (OHWM) (Finding No. 19). The OHWM was fixed by the District Court, in accordance with the allegations of the United States, at the 1934 General Land Office (G.L.O.) survey line (Findings Nos. 12, 16, 17, and 18). Findings Nos. 20 and 26 also refer to California's ownership interest in the westerly half of the riverbed to the OHWM.

Despite these specific findings of fact, Finding No. 26 states, in part, that:

> "There needs to be no further finding herein with respect to the relative rights of the State of California and of the defendants Rock for the reason that neither the State of California nor the defendants Rock have any right, title or interest in and to the land described in the complaint therein."

This finding ignores the fact that California requested that her rights in the riverbed be established regardless of the contentions of the Rocks. The establishment of the common boundary between California's riverbed and the federal uplands is necessary to complete the resolution of all the issues in this case. However, the District Court's Judgment refused to establish that boundary.

D. Motion to Amend the Judgment

Pursuant to Federal Rules of Civil Procedure, rule 59(e), California moved that the District Court's Judgment be amended to include a final determination of

the issues raised in her Answer and Cross-claim. The United States and the Rocks opposed California's motion. They agreed with the District Court's conclusion that California's interest need not be established because the Court found that the riverbed was never located on the property described in the complaint of the United States. California filed a reply brief arguing that California's Answer and Cross-Claim requested the establishment of her sovereign rights to the riverbed *wherever* it is located and, therefore, California was entitled to a judgment in her favor.

The District Court denied California's request for amendment of the judgment. (Appendix F.) The District Court indicated that because it found that there was no avulsive change to the river, the Rocks could not prevail against the United States, and in the Court's opinion, California's cross-claim did not arise. The District Court did not discuss the fact that California requested that her rights be established in the riverbed wherever it is located.

E. Appeal

California filed a timely Notice of Appeal. The purpose of the appeal was to modify the District Court's Judgment to grant the relief requested in California's Answer and Cross-Claim.

The Ninth Circuit Court of Appeals heard this case on November 3, 1982, and issued its Memorandum Decision on December 15, 1982. (Appendix A.) The Court of Appeals held that the District Court was under no obligation to decide the issues raised in California's Answer

and Cross-Claim.

California petitioned for rehearing on the basis that if California's cross-claim was not resolved, the District Court's Judgment was neither final nor appealable. The Petition for Rehearing was denied on January 14, 1983. (Appendix B.)

III. FACTUAL BACKGROUND

The underlying facts in this case are relatively simple. Basically, it involves the common boundary between two adjacent parcels of land. The first parcel is described in the United States' complaint and the District Court's Judgment; it is an upland parcel which is riparian to the Colorado River. The second parcel of land is the portion of the Colorado Riverbed next to the property described in the United States' complaint. The location of the riverbed was brought into issue before California was joined as a party by the assertions of the Rocks. Thereafter, California requested the establishment of her sovereign interest in the riverbed by the allegations in her Answer and Cross-Claim.

The central factual issue litigated at trial was the boundary between these two parcels. As outlined above, the Court, in its findings, established that boundary at the 1934 G.L.O. survey line. (Appendix D.) This is the line which was advocated by the United States. Based on these findings, the District Court concluded that the property described in the United States' complaint was not a part of the bed of the Colorado River; it is landward of the 1934 G.L.O. survey line. Consequently, the Court

held that the Rocks had no interest in the upland parcel.

However, the District Court's Judgment erroneously describes the upland parcel without reference to the 1934 G.L.O. survey line and in the same terms that it was described in the United States' complaint. (Compare Appendix G with Appendix E; see also Fed. Rules Civ. Proc., rule 54(a).) Furthermore, the Judgment does not discuss California's sovereign rights to the riverbed. The Court ignored this central issue, despite the fact that its findings support California's ownership interest in the western half of the riverbed waterward of the 1934 G.L.O. survey line.

California is seeking a judgment in her favor that she owns, in her sovereign capacity, the western half of the riverbed adjacent to the upland parcel and waterward of the 1934 G.L.O. survey line. California *is not* questioning any of the factual determinations of the District Court. Instead, California is requesting a relatively simple procedural remedy—namely, a judgment in her favor and consistent with the District Court's Findings of Fact and Conclusions of Law. California contends that the District Court had an obligation to decide the issues raised by her Answer and Cross-Claim and that the Judgment is not final until these issues are resolved.

REASONS FOR GRANTING THE WRIT

Supreme Court Rule 17 provides that granting a petition for writ of certiorari is justified:

> "When a federal court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by

> a lower court, as to call for an exercise of this Court's power of supervision."

This is a case where the supervisory powers of the Supreme Court are needed. The lower federal courts have deviated substantially from standard federal procedures by declining to decide California's Answer and Cross-Claim. This departure not only wastes the time California spent on this case, it jeopardizes the functioning of the federal court system.

The focus for this petition can be summarized by the following passage:

> "It is the responsibility of all courts to see that no unauthorized extension or reduction of jurisdiction, direct or indirect, occurs in the federal system. *Shanteroke Corp.* v. *Westchester Corp.*, 293 U.S. 449, 451. Any such *ad hoc* decisions disorganize practice by encouraging attempts to secure or oppose appeals with a consequent waste of time and money."

Justice Reed outlined this principle almost 30 years ago in the case of *Baltimore Contractors, Inc.* v. *Bodinger* (1954) 348 U.S. 176, 181. It is directly applicable to this case.

The District Court, in this case, decided to "reduce" its own jurisdiction by declining to determine the issues presented by California's Answer and Cross-Claim. The factual issues underlying the Answer and Cross-Claim were litigated and reflected in the District Court's findings. However, the Court refused to include this adjudication in its Judgment. In effect, the District Court has "decided" not to decide.

If this non-decision is allowed to stand, it will result in

an enormous waste of the time and expense already invested by California in this case; but more importantly, it would contravene the District Court's affirmative obligation to decide cases which are properly before it. Until these issues are resolved, the District Court's Judgment is not final or appealable. As noted above, this situation can be avoided by adding one paragraph to the District Court's judgment. That paragraph would locate and establish California's interest in the riverbed consistent with the District Court's findings.

I. THE DISTRICT COURT'S CONCLUSION THAT THERE IS NO NEED TO RESOLVE THE ISSUES RAISED BY CALIFORNIA'S ANSWER AND CROSS-CLAIM VIOLATES THE DISTRICT COURT'S OBLIGATION TO DECIDE CASES.

A federal court's obligation to decide those cases which are properly before it is essential to the federal court system. Indeed, it is the basis of judicial authority in the United States.

The obligation of the courts to say what the law is and apply it to particular cases was described as the ". . . very essence of judicial duty" by Chief Justice John Marshall in *Marbury* v. *Madison* (1803) 5 U.S. (1 Cranch) 137, 177–178. He expounded on this principle 17 years later in the case of *Cohens* v. *Virginia* (1821) 19 U.S. (6 Wheaton) 264, 404:

> "It is most true that this Court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We

> cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid; but we cannot avoid them. All we can do is, to exercise our best judgment, and conscientiously to perform our duty."

This principle has never been seriously questioned. As recently summarized by this Court, there is a ". . . virtually unflagging obligation of the federal courts to exercise the jurisdiction given them." (*Colorado River Water Conservation District, et al.* v. *United States* (1976) 424 U.S. 800, 817.)

In this case, the District Court has abrogated this obligation. The issues concerning California's sovereign claims were presented in California's Answer and Cross-Claim and were, in fact, litigated. Indeed, California was joined as a necessary party so that these issues and its common boundary with the federal uplands could be decided. The basis for the Court's reluctance to decide this case is not clear. What is certain is that the District Court had an obligation to completely decide all the issues properly before it. California is, therefore, entitled to a determination of the issues raised by her Answer and Cross-Claim.

To be sure, there are limited situations, none of which are applicable here, where a federal district court can delay its decision-making obligation. For example, a dis-

trict court may abstain from deciding a case pending the outcome of state court litigation. (*England* v. *Louisiana Board of Medical Examiners* (1964) 375 U.S. 411.) However, even in these situations, this Court has closely scrutinized the lower court's use of such delay tactics to avoid its obligation to decide. As summarized by this Court in *Allegheny County* v. *Mashuda Co.* (1959) 360 U.S. 185, 188–189:

> " . . . The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances . . ."

In contrast, the District Court in this case did *not* rely on the doctrine of abstention or any other doctrine to delay its decision-making obligation. The Court simply determined that there was no need to decide the issues raised by California's Answer and Cross-Claim. However, the Court did not dismiss the Answer and Cross-Claim. The issues raised by California's allegations were left in a state of limbo. This contravenes the District Court's obligation to decide these issues one way or another.

II. THE DISTRICT COURT'S JUDGMENT IS NOT FINAL OR APPEALABLE UNTIL IT RESOLVES THE ISSUES RAISED BY CALIFORNIA'S ANSWER AND CROSS-CLAIM.

An important corollary to the federal court's obligation to decide cases is the final judgment rule. The court must not only decide cases, it must *completely* decide them.

Only final and complete judgments are appealable. (28 U.S.C. § 1291.) The final judgment rule is based on the single judicial unit concept. (See 6 Moore's, Federal Practice, ¶ 54.19 (2d ed. 1948).) That is, a judgment is not final until it resolves all the issues within the judicial unit. (*Collins* v. *Miller* (1920) 252 U.S. 364.) It must dispose of the claims made by the defendant as well as those made by the plaintiff. (*Bowker* v. *United States* (1902) 186 U.S. 135.) The obvious purpose behind this rule is "to save the expense and delays of repeated appeals in the same suit, and to have the whole case and every matter in the controversy in it decided in a single appeal." (*McLish* v. *Roff* (1891) 141 U.S. 661, 665–666.)

There are only five limited situations where interlocutory orders are appealable. (28 U.S.C. § 1292.) None of these exceptions are applicable here. Also, Federal Rules of Civil Procedure, rule 54(b), provides that:

> ". . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. *In the absence of such determination and direction, any order or other form of decision, however designated,*

which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, . . ." (Emphasis added.)

There has been no rule 54(b) certificate issued in this case; the case is not final or appealable. (*Cf. Sears, Roebuck & Co.* v. *Mackey* (1956) 351 U.S. 427; *Cold Metal Process Co.* v. *United Engineering & Foundry Co.* (1956) 351 U.S. 445.)

Both the District and the Circuit Courts have made it very clear that the issues raised by California's Answer and Cross-Claim are to be left unresolved. However, if these issues are not resolved, and there is no rule 54(b) certificate from the District Court, the entire appeal should be dismised as being premature.

This jurisdictional problem was brought to the Circuit Court's attention in California's Petition for Rehearing. The Court denied the petition without comment and thereby sanctioned the procedures employed by the District Court. The Circuit Court reached this result despite the fact that it was in direct conflict with several of its own decisions.

For example, in *Illinois Tool Works, Inc.* v. *Brunsing* (9th Cir. 1967) 378 F.2d 234, the plaintiff brought a suit for patent infringement. Defendant denied infringement and counter-claimed, seeking a declaration that the patents were invalid. The infringement issue was tried first, and the plaintiff lost. The plaintiff then appealed. However, the Ninth Circuit dismissed the appeal on its own motion. The Court held that the Judgment was not final because it failed to dispose of the

defendant's counter-claim. The Court made this determination despite the fact the defendant was probably going to abandon the counter-claim because he prevailed on the infringement issue. In essence, there was no need to decide the counter-claim. The Court noted that the Judgment would have been reviewable ". . . if the district court had made an express determination that there is no just reason for delay and had given for entry of judgment Rule 54(b) Federal Rules of Civil Procedure." (*Illinois Tool Works, Inc.* v. *Brunsing, supra,* 378 F.2d at p. 236.)

To be final and appealable, the District Court should have either decided all the issues in the case or issued a rule 54(b) certificate as to some of the issues. The District Court did neither. The Circuit Court was without jurisdiction to approve an incomplete judgment of the District Court. The only alternative would have been for the Circuit Court to decide on California's Answer and Cross-Claim based on the record before it, as was suggested in California's appellate briefs and as is summarized in the following section.

III. CALIFORNIA IS ENTITLED TO A JUDGMENT BECAUSE THE ISSUES RAISED BY CALIFORNIA'S ANSWER AND CROSS-CLAIM WERE COMPLETELY LITIGATED AND DETERMINED BY THE DISTRICT COURT.

The mystery in this case is why the lower federal courts are resisting deciding the issues raised in California's Answer and Cross-Claim. Those issues were fully litigated and basically resolved by the District Court's

findings. No additional factual determinations need to be made. The District Court's findings should be included in the judgment. The District Court's and the Ninth Circuit Court of Appeals' conclusion that the location of the riverbed was not in issue in this case is at odds with the procedural history of this case.

As outlined above, the allegations of the Rocks in their answer to the United States Complaint put the location of the river in issue *before* California was joined as a necessary party. Thereafter, the basis for California's claim was specifically pled in the charging allegations of California's cross-claim and affirmative defenses. California alleged that she is a sovereign state, that the Colorado River is a navigable body of water, and that, therefore, California owns the western half of the bed of the Colorado River in trust for the people of the State of California. Based on these allegations, California prayed for the establishment of her rights in the riverbed. California could not have been more specific in her allegations.

Neither the Rocks nor the United States moved to dismiss or strike these allegations. Instead, the Rocks answered California's cross-claim and alleged that they had an interest "adverse to cross-complainant State of California." (Appendix K.) Although the United States did not contest California's sovereign interest in the riverbed, as alleged in the affirmative defenses, it did contest the location of the OHWM and the riverbed. Consequently, California's sovereign interest in the western half of the Colorado Riverbed was in issue at the

time California filed her Answer and Cross-Claim.

Even if it is assumed that the charging allegations of California's cross-claim did not contain the appropriate allegations, the rule is clear that the scope of relief is dependent on the facts proven, not the presence or absence of certain allegations. As summarized by Federal Rules of Civil Procedure, ruie 15(b):

> "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; *but failure so to amend does not affect the result of the trial of these issues.*" (Emphasis added.)

This principle is repeated in Federal Rules of Civil Procedure, rule 54(c), which provides, in part, that:

> ". . . every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in its pleadings."

There can be no question that the issues raised by the allegations of the Rocks and by California's Answer and Cross-Claim were tried by the District Court. In fact, California was joined as a party defendant to resolve these questions. As a result, the primary factual issue litigated in this case was the location of the OHWM—the common boundary between the uplands and the riverbed. The location of the riverbed was central to the positions of each of the parties. California and the Rocks

claimed the riverbed below the OHWM. The United States claimed the fast lands above the OHWM. Each of the parties presented testimony and documentary evidence to support their claim as to the location of the OHWM. (See the Memoranda of Contentions of Fact and Law, the Narrative Statements, and the Post-Trial Briefs of the parties.) The expert testimony delivered on the key issue of the OHWM consisted of three kinds: geology, land surveying, and hydraulic engineering. In addition, some lay testimony was presented. (This testimony is thoroughly summarized in the Post-Trial Briefs of the parties.) The District Court, in Findings Nos. 14 through 19, found, as argued by the United States, that the OHWM was located at the 1934 G.L.O. meander line. California's sovereign interest in the bed of the Colorado River is waterward of that line. California is, therefore, entitled to a final judgment on this issue.

The Court of Appeals also concluded that ". . . for all that the record shows, no interested parties were before the court." (Appendix A.) This observation is contrary to the fact that California was joined as a party to this case to ensure that all necessary parties were present. Furthermore, California named the appropriate and necessary parties in her Cross-Claim for Declaratory and Injunctive Relief—the Rocks. Mr. and Mrs. Rock were the only individuals who claimed an interest in the riverbed adverse to that of California's. In fact, California was made a party to this case because of the claims of the Rocks. Although California and the United States disa-

greed as to the location of the OHWM, the United States made no claim to the western half of the riverbed and, consequently, was not named in the cross-claim. Any dispute between California and the United States over the location of the riverbed was put in issue by the affirmative defenses raised in California's answer. In summary, there was a controversy between the Rocks, the United States, and California; no other party was involved. All interested and necessary parties were present.

CONCLUSION

This case is a good example of the potential chaos that can be caused if the District Court is allowed to choose the cases it wants to decide and ignore the rest. By ignoring set judicial procedures which have been developed over the last two centuries, the District Court threatens to weaken and disorganize the federal court system. The time and expense incurred by California to establish her claim will have been wasted. Furthermore, until California's Answer and Cross-Claim are decided, the case, though "closed," is still technically pending. This anomaly demonstrates the need for a final judgment and the importance of the District Court's affirmative obligation to decide this issue.

This case should be decided. All the appropriate parties and claims were brought before the District Court. The rights of the parties and the issues were adjudicated and reflected in the findings of the District Court. These determinations should be included in the judgment. The

basis for the District Court's reluctance to reach a decision is not known; it certainly should not be sanctioned. To do so would eliminate the District Court's duty to decide and would result in a partial judgment. As outlined above, this result is not only procedurally disruptive, it will result in an enormous waste of the time and expense already invested in this case.

For the foregoing reasons, it is requested that California's Petition for Writ of Certiorari be granted.

DATED: April 8, 1983

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARTIN G. ROCK and IRENE E. ROCK,
husband and wife;
Defendants-Appellants.

and

STATE OF CALIFORNIA,
Defendant-cross-claimant Appellee,

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MARTIN G. ROCK and IRENE E. ROCK,
husband and wife,
Cross-claimant-defendants-Appellees,

v.

STATE OF CALIFORNIA,
Cross-claimant-Appellant.

Nos. 82-5234
82-5257

DC No. CV
71-262-262

MEMORANDUM

Appeal from the United States District Court
for the Central District of California
Francis C. Whelan, Senior District Judge, Presiding
Argued and submitted November 3, 1983

Before: GOODWIN, HUG and BOOCHEVER, Circuit Judges

Martin and Irene Rock and the State of California appeal a judgment quieting title in the United States and awarding it damages for the Rocks' wrongful possession of certain public lands.

The Rocks claim that the trial court erred in failing to make a finding of fact on their argument that title to the contested land passed to California as part of the School Lands Grant Act of 1853, and that the court erred in allowing the Secretary of the Interior to maintain the lands in withdrawn status under the Reclamation Act. In the alternative, they argue that if the Secretary of the Interior did have authority to hold the land in withdrawn status, he was required to accept the Rocks' application for a patent for the land because they had satisfied all of the requirements of the Color of Title Act and were statutorily entitled to the patent.

California appeals the court's failure to enter a judgment establishing the state's ownership in the western half of the bed of the Colorado River in the contested area. California also seeks to recover costs against the Rocks. We affirm the judgment in all respects.

On February 3, 1971, the United States filed an action to eject Martin and Irene Rock from an upland parcel riparian to the Colorado River (the Rock lands) in Section 36 of Township 2 North, Range 26 East of San Bernardino County, California. The United States obtained the Rock lands from Mexico in 1848 and never has disposed of the lands by patent. The United States withdrew the Rock lands from public entry under the Reclamation Act in 1902 and they never have been restored to public entry.

The Rocks have been in possession of the Rock lands since 1956, under a quitclaim deed showing title in the United States. As an affirmative defense to the United

States' action they claimed title by adverse possession against the State of California. Their theory was that although the land originally belonged to the United States, title passed to the State of California either by the 1853 grant of Sections 16 and 36 of every township for the purposes of public schools, or because the land was a part of the bed of the Colorado River and upon admission to statehood California acquired ownership of the beds of navigable bodies of water within its boundaries. The Rocks argue that they adversely possessed against the state.

California was joined as a party defendant and cross-claimed against the Rocks to protect whatever interests it might have in the Rock lands. California denied that the Colorado River had shifted avulsively in the contested area, and requested that its sovereign title to the western half of the bed of the Colorado River be established.

On December 28, 1981, the trial court entered judgment for the United States. It rejected the Rocks' theory that the Rock lands were avulsively uncovered riverbed and held that California had not acquired the lands upon statehood. The court noted that the Rocks "have made no showing that they ever acquired title to the lands which they occupy, or that they ever occupied it other than under the authority of the United States pursuant to a land use permit therefrom, which they wrongfully attempted to rescind. . . ."

The court also concluded that California had no right, title or interest in the lands described in the complaint,

and correctly declined to rule on California's generalized claim with reference to the western half of the riverbed because such a decision was not necessary to the disposition of the case.

Under the School Lands Grant Act, the United States granted to California Section 36 in every township as school land. Title in the land was to be vested indefeasibly when the land was surveyed. Survey of the Rock lands was completed by the U.S. Reclamation Service in 1934. Under the Reclamation Act, however, the Rock lands were withdrawn from public entry in 1902 and have been held in that withdrawn status ever since.

The Rocks contend that the Reclamation Act requires the Secretary of the Interior to restore to public entry lands that are not contemplated for use under the Reclamation Act. Because the United States anticipated no reclamation use of the Rock lands, the Rocks assert that the Secretary is required to restore them to public entry. The Rocks then argue that if the court were to compel restoration of the Rock lands to public entry, the lands would vest indefeasibly in California pursuant to the School Lands Grant Act. The Rocks then would claim title to the lands by adverse possession, on the theory that title to proprietary lands of the state can be obtained through adverse possession, and that the state's ownership would relate back to 1934, the date of the survey.

The Rocks have never sued the Secretary of Interior to force the restoration of the lands and conveyance to the state. We express no opinion upon their standing to

do so. Even if the Rocks' claim against the Secretary were meritorious, it is pointless because they cannot adversely possess against the state land which the state is holding in trust for public use. *People v. Shirokow*, 605 P.2d 859, 866 (1980), *citing Hoadley v. San Francisco*, 50 Cal. 265, 274–276 (1875). The court correctly ruled that the Rocks could not obtain title to these lands through adverse possession.

The Rocks' Color of Title theory is also unpersuasive. They have not met the requirements of 43 U.S.C. § 1068.

The essence of California's appeal is whether the district court properly rejected California's request for establishment and declaration of its ownership in the Colorado River. California's request for establishment and declaration of its ownership in the Colorado River came in the prayer of its cross-claim. The only issues in a case presented for review are those established by the pleadings. *Daniels v. Thomas*, 225 F.2d 795, 797 (10th Cir. 1955), *cert. denied*, 350 U.S. 977 (1956). The general ownership of the riverbed was not at issue, and for all that the record shows, no interested parties were before the court. Further, contrary to California's contentions, the district court made no explicit findings of fact on whether the ordinary high water mark of the Colorado River was fixed by the government's 1934 survey. Such a finding would be necessary to establish the state's interest. Instead, the court found that "there needs to be no further finding herein with respect to the relative rights on the State of California and of the defendants Rock for the reason that neither the State of California

nor the defendants Rock have any right, title or interest in and to the land described in the complaint therein." Because California's interests in the river did not have to be determined in order to resolve the case against the Rocks, the court had no duty to decide the question.

There was no error and no abuse of discretion in denying costs to the State of California.

Affirmed.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife,
Defendants.

STATE OF CALIFORNIA,
Cross-Complainant,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife,
Cross-Defendants.

CV 71-262-FW

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for trial on February 10, 11, 12 and 17, 1981, before the Honorable Francis C. Whelan, Senior United States District Judge; the plaintiff, United States of America, appearing through

its attorneys, Andrea Sheridan Ordin, United States Attorney, Frederick M. Brosio, Jr., Assistant United States Attorney, Chief, Civil Division, James R. Arnold, Assistant United States Attorney, by John E. Lindskold, Attorney, Land and Natural Resources Division, Department of Justice, Washington, D.C.; and defendants Rock appearing, and being represented by Richard A. Del Guercio of Demetriou, Del Guercio and Lovejoy, Attorneys at Law; and defendant and cross-claimant, State of California, appearing through its attorneys, George Deukmejian, Attorney General, N. Gregory Taylor, Assistant Attorney General, by Richard P. Yang, Deputy Attorney General; and after due consideration of the legal memoranda, the oral and documentary evidence, and the oral and written argument made at the time of trial, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Introduction

1. This action was brought by the plaintiff, United States of America, to recover possession from defendants Martin G. Rock and Irene E. Rock of certain real property situated within Section 36, T. 2 N., R. 26 E., S.B.B.&M. and for damages against the defendants Rock in the amount of the reasonable rental value of the property.

2. The defendants Rock filed an answer admitting that they have been in possession of portions of the property since 1956 and alleging, by way of an affirmative

defense, that title to the property they occupied was in the State of California by virtue of the fact that, *inter alia,* the property was located in the bed of the Colorado River at the time California was admitted to the Union. Defendants Rock contend that they are the owners of the property by adverse possession against the State of California.

3. The State of California was joined as party defendant, whereupon the State of California filed a cross-cl im against defendants Rock to protect its interest in the event the defendants Rock's factual assertions and legal contentions prevailed against the United States.

Occupancy by Defendants Rock

4. By "Agreement" of purchase dated April 4, 1956, defendants Rock purchased a house described as situated in the "westerly one-half of the parcel of Government land" within Section 36, T. 2 N., R. 26 E., S.B.B.&M. The "Agreement" of purchase also recited that title to the property was vested in the United States of America, as follows:

> WHEREAS, the Sellers are the owners of a large furnished residence having square foot area of approximately 2833 square feet, *located on United States Government owned and controlled land,* which is hereinafter more particularly described as follows:
>
> * * * * *
>
> WHEREAS, the Sellers have *not received a fee title from the United States Government* but have established certain rights therein which are under-

stood and known to both the Buyers and Sellers; * * * (Emphasis added)

In the quit claim deed of conveyance, dated April 4, 1956, the property was also described as the "westerly ½ of a parcel of Government land."

5. In the 1950's, the U. S. Bureau of Reclamation inventoried the trespass occupancies along the Colorado River from Davis Dam to Mexico. In 1961 the Department of the Interior established the Lower Colorado River Land Use Office in Yuma, Arizona, which initiated and administered an "Application and Permit" program to legalize occupancies existing on April 20, 1961. To obtain a permit under the program, the applicants were required to acknowledge that title to the property they occupied was in the United States.

6. By letter of September 22, 1961, in response to letters from the Lower Colorado River Land Use Office, defendants Rock filed an application for a permit. Attached to their application were portions of the pages from the "Agreement" of purchase describing the house "located on United States Government owned and controlled land." On November 6, 1961, defendants Rock met with officials in the Lower Colorado River Land Use Office wherein the Rocks agreed to acknowledge federal ownership if their occupancy under the permit would be limited to a parcel consisting of 0.48 acres. On November 24, 1961, the defendants Rock executed a disclaimer and were issued a permit for the 0.48-acre parcel. The defendants Rock paid $390 annual rental for 1962 and 1963 which was due under the permit.

7. In 1962 a group of occupants along the Colorado River in California organized the Colorado River Resident Resort Association. The members were advised, among other things, to unilaterally rescind all permits from the Government. On January 11, 1964, defendants Rock sent a "rescission form" to the Lower Colorado River Land Use Office upon which the word "cancelled" was written across their signatures on the disclaimer.

8. By letter dated March 9, 1964, the Lower Colorado River Land Use Office advised defendants Rock that their present and past use fees were delinquent, that they had no basis to rescind the permit, and in the event that their permit was terminated for nonpayment, they would be subject to an action for ejectment and trespass and collection of damages based upon full appraised value. The defendants Rock failed to pay the fees due, and the Lower Colorado River Land Use Office terminated their permit effective February 13, 1965.

Basis of Ownership of United States of America

9. The United States of America acquired the lands occupied by defendants Rock from Mexico by virtue of the Treaty of Guadalupe Hidalgo in 1848. 9 Stat. 922.

10. After admission to the Union in 1850, pursuant to Section 6 of the Act of March 3, 1853, 10 Stat. 246, Congress granted the State of California Sections 16 and 36 for the purposes of public schools, and pursuant to Section 7 of the Act of March 3, 1853, 10 Stat. 247, where the lands were reserved for public purposes before they

were surveyed, the State of California was entitled to select other land in lieu thereof.

11. In 1902, T. 2 N., R. 26 E., S.B.B.&M., within which the lands occupied by defendants Rock are situated, was withdrawn from public entry under the second form of withdrawal under the Act of June 17, 1902, 32 Stat. 388, and in 1930 under the first form of withdrawal under the same statute. The first and second form of withdrawals, which include the lands occupied by defendants Rock, have never been abrogated, revoked, cancelled or rescinded.

12. In 1934, T. 2 N., R. 26 E., S.B.B.&M., was surveyed for the first time by the G.L.O. at the request of the U. S. Reclamation Service. The Special Instructions, dated January 8, 1934, under which the surveys were executed, directed the surveyors to establish meander corners "at mean high water mark" and that the "west bank of the Colorado River [was to] be meandered at mean high water mark and the necessary meander corners established thereon." The lands occupied by defendants Rock are situated above the surveyed meander line.

13. The records of the United States of America show that the lands constituting Section 36, T. 2 N., R. 26 E., S.B.B. & M., as described in the Government survey, have not been disposed of by patent or otherwise, to the State of California or any other person, and are public lands of the United States of America.

Basis of Ownership of the State of California

14. The Colorado River, in its reach along the lands

occupied by defendants Rock, is a navigable body of water.

15. Upon admission to the Union in 1850, the State of California became vested with title to lands underlying navigable bodies of water, including the bed of the Colorado River up to the middle of the channel.

16. Since 1850 to the present, in its reach along the lands occupied by defendants Rock, the banks of the Colorado River have not changed their position substantially, and, as a result, the channel of the Colorado River has occupied essentially the same location since statehood.

17. In its reach along the lands occupied by defendants Rock, the banks of the Colorado River are well-defined vertical banks at least 10 to 15 feet high. The tops of the bank, over a narrow 100-foot strip paralleling the river, are covered with vegetation.

18. (a) The credible evidence establishes that before Boulder Dam was closed in 1934, which dam is upstream of the lands occupied by the defendants Rock and on the Colorado River, there was only one or possibly two occasions when at flood times the Colorado River overflowed the banks of the river and inundated a portion of the lands herein involved.

(b) Mr. Graham, a local resident who lived along the Colorado River in its reach along the lands occupied by defendants Rock from 1921 until Boulder Dam was closed in 1934, never saw the Colorado River top its banks except during the flood of 1921. During the 1921–1934 period when Mr. Graham observed the river, the

United States Geological Survey flow records show that the maximum daily discharge in 1921 was 174,000 c.f.s.; in 1922 was 121,000 c.f.s.; in 1923 was 102,000 c.f.s.; in 1927 was 104,000 c.f.s.; in 1928 was 110,000 c.f.s.; and in 1929 was 100,000 c.f.s.; in all other years during the 1921–1934 period was well below 100,000 c.f.s.

(c) Mr. Mills, a civil engineer who was employed by the Metropolitan Water District, observed high flows in August, 1930, which were not near a bank-full stage in the reach of the Colorado River along the lands occupied by defendants Rock. The flow records of the United States Geological Survey show that when Mr. Mills observed the river the Colorado River experienced discharges at Topock gage of 42,400, 47,700, and 43,700 c.f.s. on August 15, 16 and 17, 1930, respectively.

(d) Mr. Doyle, a geologist employed by the Bureau of Reclamation, examined the soils on the lands claimed by defendants Rock. In the area where the property exceeds the elevation of 378 feet, he observed "desert pavement," which indicated that the area had experienced no river flooding for about 6,000 to 7,000 years. Mr. Doyle also took 16 soil samples with an auger from which he concluded that, except for a band approximately 80–90 feet wide along the present river bank, the lands claimed by defendants Rock were composed of detrital materials derived from the adjacent rock outcrops, not from material deposited by the Colorado River.

(e) Mr. Permberton, a sedimentation specialist employed by the Bureau of Reclamation, conducted a study

of the hydraulic characteristics of the Colorado River in the reach near the lands occupied by the defendants Rock and concluded that at RS 40, where the top of the bank was surveyed in at 374 feet, a discharge of 140,000 c.f.s. would reach an elevation of 374 feet m.s.l.

19. An area of land which is flooded only by an occasional flood does not lie below the ordinary high water mark of a river and does not constitute a part of the bed of the river owned by a state under the equal footing doctrine.

Ownership of Lands Occupied by Defendants Rock

20. The lands occupied and claimed by defendants Rock, a portion of which were flooded only by an occasional flood before the closing of Boulder Dam, lie above the present ordinary high water mark of the Colorado River and were above the ordinary high water mark of the Colorado River before the closure of Boulder Dam and were not situated in the bed of the Colorado River owned by the State of California at the time of its admission into the Union, or at any time to the date of this trial; and, as such, constitutes part of the public land of the United States.

21. The defendants Rock have made no showing that they ever acquired title to the lands which they occupy, or that they ever occupied it other than under the authority of the United States pursuant to a land use permit therefrom, which they wrongfully attempted to rescind, and which was terminated by the United States for non-payment of rent.

22. The defendants Rock have occupied and now occupy the lands described in the complaint except as hereinafter appears, and have withheld, and do now withhold, possession of all of such lands thereof from the United States, contrary to its right of possession; that Rocks claimed title to all of the lands described in the complaint and that such claim is without right.

Damages

23. With respect to the question of damages to be awarded to the United States of America, the testimony of the Government's witness concerning fair rental value is rejected because he did not take into account the usual factors which are taken into account in the appraisal of real property. He did not refer to any comparable sales of property or other rents and gave no satisfactory explanation for the big increase in rental value between 1962 and 1966. No comparable sales or rents of other real property in the area of the property claimed by the Rocks were shown, or referred to, by the Government witness concerning fair rental value or fair market value; in fact, he did not refer to either any sale or rent on the open market comparable to the property claimed by the Rocks. There was no evidence produced through the testimony of such Government witness to show why the Government suffered anything other than nominal damage because the Rocks claimed title to certain land which they were not physically occupying in any way. (This land was not land which they occupied for homesite purposes, and according to the evidence,

was entirely vacant of any improvement.) Yet, the witness claimed that the Government had sustained considerable money damage because of such purely paper claim. The witness stated that his appraisal as to the fee value of the land involved was arbitrarily reached.

24. In arriving at the amount of damages for the period 1966 to 1974 the court has based the fair rental value upon the $390.00 a year paid by the defendants Rock to the United States. For the balance of the years ending with the year 1980, the court has increased the annual rental value by an average of 50% of $390.00, because of the inflation of prices which has occurred in the United States of America. The amount of damages awarded therefore is the total sum of $7,020.00.

25. The lay testimony produced by the Government in this case as to whether or not there was flooding of the Rock lands prior to the closure of the Boulder Canyon is credible testimony. The court considers that the testimony of the witnesses Graham and Mills was credible, and it establishes that there was no flooding of the Rock lands except on one or two occasions in the years prior to the Boulder Dam closure. The court rejects the testimony of the lay witness for the defendants as to this issue. Furthermore, the testimony of Graham and Mills is corroborated by the expert witnesses called by the Government. The case then is not a case involving just experts, and it is not a case involving a "battle of the experts." The court finds that the experts for the plaintiff are more worthy of belief than are the experts for the defendants to the extent that there is any conflict.

The artificially created change along the river—to-wit, Boulder Dam, did not cause any change along the river adjoining the Rock property other than the suppression of the very occasional flooding of the river at that point. Nor did any other dam along the Colorado River affect any other change.

26. That the ordinary high water mark of the Colorado River along the area of the real property claimed by the Rocks at no time was or is higher than the bank of the river at any point on the property claimed by the Rocks.

That the State of California has no claim whatsoever to any land above the ordinary high water mark of the Colorado River, and thus has no right, title, or claim in or to any of the property described in the complaint in this action. There needs to be no further finding herein with respect to the relative rights of the State of California and of the defendants Rock for the reason that neither the State of California nor the defendants Rock have any right, title or interest in and to the land described in the complaint therein.

27. Any Findings of Fact which are erroneously termed Conclusions of Law are hereby incorporated into these Findings of Fact.

CONCLUSIONS OF LAW

1. The court has jurisdiction over the subject matter of this action under 28 U.S.C. 1345, and the real property which is the subject of this action is located within the territorial jurisdiction of this court.

2. The plaintiff, United States of America, is now, and at all times since defendant Rock's entry thereon, has been the owner of the real property described in the complaint; and since April 1, 1956, has been entitled to exclusive possession of said property wrongfully occupied by defendants Rock; and said property consists entirely of uplands belonging to the United States.

3. Defendants Rock have wrongfully and unlawfully occupied said property, without any right, title or interest therein, since April 1, 1956, and have continued wrongfully and unlawfully to occupy the property described in the complaint, and have wrongfully and unlawfully withheld possession thereof from the United States, and, as a result of such occupancy, the United States is entitled to damages in the amount of $7,020.00.

4. Defendants Rock have failed to make any showing of title in themselves, through the State of California or through any other source; and a claim of title by adverse possession does not lie against the United States.

5. Defendant State of California does not have any right, title or interest in or to the lands described in the complaint herein.

6. Any Conclusions of Law which are erroneously termed Findings of Fact are hereby incorporated into these Conclusions of Law.

7. Judgment shall be entered in favor of plaintiff and against the defendants.

DATED: This 22nd day of December, 1981.

FRANCIS C. WHELAN
United States District Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife,
Defendants.

STATE OF CALIFORNIA,
Cross-Complainant,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife,
Cross-Defendants.

CV 71-262-FW

JUDGMENT

This matter having come on for trial on February 10, 11, 12 and 17, 1981, before the Honorable Francis C. Whelan, Senior United States District Judge; the plaintiff, United States of America, appearing through its attorneys, Andrea Sheridan Ordin, United States Attorney, Frederick M. Brosio, Jr., Assistant United

States Attorney, Chief, Civil Division, James R. Arnold, Assistant United States Attorney, by John E. Lindskold, Attorney, Land and Natural Resources Division, Department of Justice, Washington, D.C.; and defendants Rock appearing, and being represented by Richard A. Del Guercio of Demetriou, Del Guercio and Lovejoy, Attorneys at Law; and defendant and cross-claimant, State of California, appearing through its attorneys, George Deukmejian, Attorney General, N. Gregory Taylor, Assistant Attorney General, by Richard P. Yang, Deputy Attorney General; and after due consideration of the legal memoranda, the oral and documentary evidence, and the oral and written argument made at the time of trial, and in accordance with the Findings of Fact and Conclusions of Law entered herein;

IT IS ORDERED, ADJUDGED AND DECREED:

1. That all right, title and interest in the following described lands are hereby quieted in the United States, and the defendants Rock and defendant State of California, and each of them, are barred and forever estopped from having or claiming any right, title or interest therein:

> Lots 3, 4 and the NW1/4 NW1/4 of Section 36, T. 2 N., R. 26 E., S.B.B.&M, situated in the County of San Bernardino, California.

2. That the possession of the defendants Rock, and each of them, has been without any right, title or interest in the lands described in paragraph 1 hereof, and that the United States recover possession of said lands.

3. That the defendants Rock, and each of them, remove themselves, their employees, lessees, officers and agents, belongings, chattels, improvements and fixtures from the lands described in paragraph 1 hereof, and restore said real property and premises wrongfully occupied to the condition prior to their unlawful entry; such removal and restoration to be accomplished within thirty (30) days following entry of this judgment.

4. That judgment be entered in favor of the United States against defendants Rock in the amount of $7,020.00, plus interest in accordance with law until such amount is paid in full.

5. That plaintiff recover of the defendants its costs of action.

DATED this 22nd day of December, 1981.

Francis C. Whelan
SENIOR UNITED STATES
DISTRICT JUDGE

Presented by:

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife,
Defendants.

STATE OF CALIFORNIA,
Cross-Claimants,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife,
Cross-Defendants.

No. CV 71-0262-FW

(PROPOSED)
ORDER DENYING
CALIFORNIA'S
MOTION
TO AMEND JUDGMENT

The motion to amend judgment brought by the State of California came on for hearing on February 2, 1982

before the Honorable Francis C. Whelan, Senior United States District Judge. The parties appeared by counsel. The Court has duly considered the briefs addressing this motion as well as the pleadings in this case; and has examined the answer and cross-claim of the State of California, filed herein October 4, 1978. In particular, the Court has reviewed paragraph 4 of California's affirmative defenses and paragraph 4 of the allegations in California's cross-claim against the defendants Rock. The Court accordingly finds that California's affirmative defense to the United States' complaint was that there was no avulsive change to the river and that their claim would only rise against the Rock defendants if the Court were to have found that an avulsive change had occurred in the nature of the Colorado River at the point of land in question. The Court having found that the River remains in its natural state, the motion to amend the judgment is hereby DENIED.

DATED: This 8th day of February, 1982.

FRANCIS C. WHELAN
UNITED STATES DISTRICT
JUDGE

SUBMITTED BY:

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Assistant United States Attorney
Chief, Civil Division
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Trial Attorney
U.S. Department of Justice

JAMES R. ARNOLD
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff* v. MARTIN G. ROCK and IRENE E. ROCK, husband and wife, *Defendants.*	No. 71-262 COMPLAINT FOR EJECTMENT, FOR RENT DUE, AND FOR DAMAGES

COMES NOW the plaintiff, United States of America, by its attorneys, Robert L. Meyer, United States Attorney, and Bryan N. Freeman, Assistant United States Attorney, Central District of Calfornia, at the request of the Department of the Interior, and upon the direction of the Attorney General of the United States, and complains of the defendants, and each of them, and alleges as follows:

FIRST CAUSE OF ACTION

1. That this is a civil action brought by the United States of America in its sovereign capacity, and the jurisdiction of this Court is invoked under 28 U.S.C. 1345;

2. That the real property which is the subject of this action is located within the territorial jurisdiction of this Court;

3. That during all times herein mentioned, plaintiff has been and now is, the owner of the real property and premises situate in the County of San Bernardino, State of California, and described as follows:

> Lots 3, 4 and the Northwest One-Quarter of the Northwest One-Quarter of Section 36, Township 2 North, Range 26 East, S.B.M. together with any accretions thereto;

4. That at all times herein mentioned, the aforesaid real property and premises were, and are, embraced within the second form withdrawal of July 2, 1902, as amended August 26, 1902, and in the first form withdrawal of June 4, 1930, under Section 3 of the Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. 416, and were, and are, withdrawn from public entry;

5. That at all times, commencing on April 1, 1956, the defendants have been, and now are, in possession of portions of the aforesaid real property and premises;

6. That on or about November 24, 1961, defendants made application to the United States Department of the Interior for a permit for the use of said portions of said real property and premises wherein they acknowledged that the title and right to possession of said lands were vested in the plaintiff, and agreed to pay to the plaintiff the sum of $390.00 each year, for the use of said real property and premises, payable in advance on the first day of January of each year, commencing on Janu-

and paragraph 8 of their answer to the second cause of action.

10. Defendants admit the allegations of paragraphs 16 and 17.

11. Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 18 and 19 and accordingly deny said allegations.

FIRST AFFIRMATIVE DEFENSE

12. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

13. The real property described in the complaint lies in whole or in part within Section 36, Township 2 North, Range 26 East, S.B.B.M. or other lands most equivalent or contiguous thereto, and title thereto passed to the State of California upon its admission to the Union. Title to said real property is not in plaintiff and if not in defendants is in the State of California or is at least prima facie in the State of California. Thereby the State of California is an indispensable party to this action.

THIRD AFFIRMATIVE DEFENSE

14. Defendants and their predecessors in interest, ancestors and grantors have held and claimed and possessed the real property described in the complaint, under claim and color of title, for a period of more than twenty years from the date hereof and during said period of claim and possession have placed valuable improvements thereon and have cultivated portions thereof. Such claim and possession have been in good

faith and peaceful and adverse to any other person or entity including the State of California and plaintiff herein. Thereby, defendants are the owners of said real property or, in the alternative, are, if they are not finally determined to be the owners thereof, entitled to the issuance of a patent thereto from plaintiff and the Secretary of the Interior, all in accordance with the provisions of the Color of Title Act (43 USC 1068-1068b).

FOURTH AFFIRMATIVE DEFENSE

15. Defendants and their predecessors in interest, ancestors and grantors have paid all taxes levied on the real property described in the complaint.

16. Defendants incorporate herein by reference each and every allegation set forth in paragraph 14 of their third affirmative defense.

FIFTH AFFIRMATIVE DEFENSE

17. In the alternative, defendants allege that title to the real property is in the State of California in that said real property is or may be determined to be swamp or overflowed land as represented on approved township plats or surveys of the State of California or plaintiff.

18. Defendants allege that, by virtue of the acts and facts alleged in the third and fourth affirmative defenses, they are the owners of said real property or, in the alternative, are entitled to indemnity for said lands or other lands in lieu thereof, all in accordance with applicable provisions of law.

SIXTH AFFIRMATIVE DEFENSE

19. In the alternative, defendants allege that if the real property described in the complaint was in fact and

law properly withdrawn from public entry, then the Secretary of the Interior is under a duty to restore said lands to public entry in accordance with the provisions of 43 USC 416.

20. Defendants are informed and believe and based upon such information and belief allege that said lands, in whole or in part, are not required for any irrigation works and that said fact is and for some time has been known to the Secretary of the Interior, and that the failure and refusal of said Secretary of the Interior to heretofore restore said lands to public entry is unreasonably arbitrary and capricious and amounts to constructive fraud insofar as the rights of these defendants are concerned.

21. Defendants are informed and believe and based upon such information and belief allege that the real property described in the complaint is not susceptible to irrigation from any irrigation works contemplated at the time of such withdrawal or as disclosed upon surveys made therefor and that no such works or system is practicable or advisable. Any determination of the Secretary of the Interior to the contrary is and was arbitrary, unreasonable and capricious and amounts to constructive fraud.

SEVENTH AFFIRMATIVE DEFENSE

22. As an alternative, defendants allege that title to the real property described in the complaint is not in plaintiff but was, upon the admission of California to the Union, vested in the State of California in that the said real property was at that time located in the bed of the

Colorado River, west of the middle of the channel. Defendants allege that all or part of the real property described in the complaint is below the low water mark.

23. Defendants incorporate in this defense the allegations set forth in the third and fourth affirmative defenses.

EIGHTH AFFIRMATIVE DEFENSE

24. At the time defendants executed the document described in paragraph 6 of the complaint and made the payments thereon, they did so under the mistaken belief that they were required to do so in order to retain possession of said real property. Said mistaken belief was induced by plaintiff and its agents and officers either under a mistaken belief on their part that the said real property was owned by plaintiff or under circumstances where they knew or should have known that the plaintiff was not in fact the owner of or entitled to possession of said real property.

25. Subsequently, in 1963, defendants became aware of the true facts that plaintiff was not the owner of said real property and immediately notified plaintiff in writing that, by reason of the facts alleged herein and the facts set forth in said writing, the said document was cancelled and rescinded. Attached hereto and incorporated herein, marked Exhibit A, is a true copy of said document of cancellation and rescission. Each and every allegation and assertion therein set forth as grounds or cause for cancellation are incorporated as allegations herein.

26. Defendants would not have executed such

document as described in paragraph 6 of the complaint but for plaintiff's acts and representations as alleged herein and described in Exhibit A. Accordingly, said document is of no force and effect and defendants are entitled to all sums paid thereunder plus interest.

FIRST COUNTERCLAIM

27. Defendants and their predecessors in interest, ancestors and grantors have held and claimed and possessed the real property described in the complaint, under claim and color of title, for a period of more than twenty years from the date hereof and during said period of claim and possession have placed valuable improvements thereon and have cultivated portions thereof. Such claim and possession have been in good faith and peaceful and adverse to any other person or entity including the State of California and plaintiff herein. Thereby, defendants are the owners of said real property.

28. Defendants and their predecessors in interest, ancestors and grantors have paid all taxes levied on the real property described in the complaint.

29. In the event it is determined that title to the real property is vested in plaintiff, then defendants are entitled to a patent to said lands by virtue of the provisions of 43 USC sections 1068-1068b and, pursuant thereto, defendants hereby apply, without admitting or conceding title in plaintiff, to purchase said lands pursuant to said provisions of law.

SECOND COUNTERCLAIM

30. The real property described in the complaint

became vested in the State of California either as "school lands" being the 36th section, or as riverbed lands in a navigable river, to wit, the Colorado River, or as swamp and overflowed land, all in accordance with applicable statute and law.

31. Defendants and their predecessors in interest, ancestors and grantors have held and claimed and possessed the real property described in the complaint, under claim and color of title, for a period of more than twenty years from the date hereof and during said period of claim and possession have placed valuable improvements thereon and have cultivated portions thereof. Such claim and possession have been in good faith and peaceful and adverse to any other person or entity including the State of California and plaintiff herein. Thereby, defendants are the owners of said real property.

32. Defendants and their predecessors in interest, ancestors and grantors have paid all taxes levied on the real property described in the complaint.

WHEREFORE, defendants demand judgment against plaintiff that defendants are the owners of and entitled to possession of the real property described in the complaint; that plaintiff has no right, title or interest in the real property described in the complaint; that defendants are not indebted to plaintiff; or, in the alternative, that upon the payment of the sums ascertained in accordance with the provisions of 43 USC 1068-1068b a patent to said lands issue to defendants; and that defendants be awarded their costs of suit herein.

DATED: April 30, 1971.

DEMETRIOU & DEL GUERCIO
RICHARD A. DEL GUERCIO

By_____
Richard A. Del Guercio

Attorneys for Defendants
Martin G. Rock and Irene E. Rock

Address: _____

_____

December _____ 1963.

UNITED STATES
Department of the Interior
Lower Colorado River Land Use Office
Box 1648
YUMA, Arizona

Gentlemen:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned do/does hereby rescind the Disclaimer, and the Contract for the use of the land hereinafter described, as executed by (h /them), to and with you or some of you, on or about the ____ day of _____, 1963.

The land affected by said Disclaimer and Contract of Use is situated in the County of _____, State of California, and is known and described as follows, to wit:

The westerly one-half of a parcel of STATE OF CALIFORNIA SCHOOL LAND described as follows:

The center of the present road being the property line separating the easterly and westerly portions and is more exactly indicated by four steel stakes driven in approximately the center of the roadbed; all of said easterly and westerly portions being described as a parcel of STATE OF CALIFORNIA SCHOOL LAND in Lots 1 and 2 and the Northwest ¼; Northwest ¼; Section 36, Township 2 N.; R.26E., SBB&M.

From a point of beginning which is a 1-inch capped pipe at the Northeast corner of property, which point is 711.87 feet South and 1151.12 feet West, or S 58° 16′ W.; 1353.45 feet from the ¼ Section corner common to Sections 25 and 36 in the above described Township and Range; thence S. 55° 16′ W. for 300 feet (a capped 1-inch pipe); thence S. 34° 44′ E. for 762.0 feet to the River; thence along the river bank at the meander bearing of N. 47° 18′ E. for 302.9 feet; thence N. 34° 44′ W. for 720.0 feet back to the point of beginning; said described area comprises 3.0 acres, more or less.

This Rescission is based upon the grounds, that the execution thereof, by the undersigned, was induced, and obtained, by you under fraud, coercion, duress and misrepresentation, practiced by you, upon the undersigned, in respect thereof and by reason of which and not otherwise, said documents were executed and by reason of the mistake, mutual or otherwise, of the parties thereto.

I/We hereby offer to restore to you everything, if anything, which I/We have received from you by reason of the execution thereof, and otherwise to do equity as may be determined by mutual agreement, or by any court of competent jurisdiction.

In accordance therewith, I/We hand you herewith the documents received by me/us, from you in said transaction, and I/We have written the word "CANCELLED" across the signatures thereto, and authenticated said cancellation by my/our statement of the date thereof and my/our signature(s) in evidence

thereof, before a Notary Public.

I/We hereby demand of you that you return to me/us, everything you received from me/us, under or by reason of the execution of said documents in evidence of, or by reason of, said transaction which I/We have hereby rescinded under the laws of the State of California.

Sincerely yours,

_____ _____

EXHIBIT A

United States District Court

FOR THE

CENTRAL DISTRICT OF CALIFORNIA

CIVIL ACTION FILE NO. 71-262-HW

UNITED STATES OF AMERICA,
Plaintiff
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife;
STATE OF CALIFORNIA,
added Party Defendant,
Defendants.

Additional SUMMONS on added party defendant State of California

To the above named Defendant: STATE OF CALIFORNIA

You are hereby summoned and required to serve upon UNITED STATES ATTORNEY plaintiff's attorney, whose address is 1200 U. S. Courthouse, 312 North Spring Street, Los Angeles, California 90012 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so,

judgment by default will be taken against you for the relief demanded in the complaint.

EDWARD M. KRITZMAN
Clerk of Court.

K. HAMILTON
Deputy Clerk.

Date: Feb. 3, 1971, Complaint filed. [Seal of Court]
May 3, 1973, State of California
added as Party Defendant

NOTE: The summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

EVELLE J. YOUNGER, Attorney General
N. GREGORY TAYLOR,
Assistant Attorney General
RICHARD P. YANG,
Deputy Attorney General
3580 Wilshire Boulevard
Los Angeles, California 90010
Telephone: (213) 736-2085

Attorneys for Defendant and
Cross-complainant
State of California

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife;
STATE OF CALIFORNIA,
Defendants.

STATE OF CALIFORNIA,
Cross-Complainant,
v.
MARTIN G. ROCK and IRENE E. ROCK, husband and wife,
Cross-defendants.

No. CV 71-0262-FW

ANSWER AND CROSS-CLAIM OF STATE OF CALIFORNIA

COMES NOW, defendant State of California, by its attorneys Evelle J. Younger, Attorney General, Richard P. Yang, Deputy Attorney General, and answering the complaint of the United States of America herein, alleges and answers as follows:

ANSWER TO FIRST CAUSE OF ACTION

1. Answering paragraphs 1 and 2 of the complaint, defendant State of California admits each of the allegations contained therein.

2. Answering paragraph 3 of the complaint, defendant State of California alleges that the State of California, by virtue of its sovereignty, owns all of the real property lying in the current bed of the Colorado River from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side, and with the sole exception of the foregoing, admits the allegations contained therein.

3. Answering paragraph 4 of the complaint, defendant State of California admits the allegations contained therein.

4. Answering paragraphs 5 through 11, inclusive, of the complaint, defendant State of California denies specifically and generally each and every allegation contained therein insofar as any allegation refers to an act of the State of California. As to acts alleged to have been done by any other defendant, the State of California has no information or knowledge sufficient to form a belief as to the truth or falsity of the allegations in those paragraphs, and on that basis denies those allegations.

ANSWER TO SECOND CAUSE OF ACTION

5. Answering paragraph 12 of the complaint, defendant State of California incorporates by reference the allegations in paragraphs 1 through 4 of its answer to the First Cause of Action, and makes them a part hereof, wherever appropriate, as if set forth in their entirety at this point.

6. Answering paragraphs 13 and 14 of the complaint, insofar as the allegations therein refer to an act of defendant State of California, this answering defendant alleges that it has been in rightful possession of the current bed of the Colorado River from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side, and with the sole exception of the foregoing, denies generally and specifically each and every allegation contained in those paragraphs. As to any allegations therein referring to any other defendant in this action, the State of California has no knowledge or information sufficient to form a belief as to the truth or falsity of those allegations, and on that basis denies those allegations.

ANSWER TO THIRD CAUSE OF ACTION

7. Answering paragraph 15 of the complaint, defendant State of California incorporates by reference the allegations contained in paragraphs 1 through 4, inclusive, and paragraph 6 of its answer herein, and makes them a part hereof, wherever appropriate, as if set forth in their entirety at this point.

8. Answering paragraph 16 of the complaint, defend-

ant State of California admits the allegations contained therein.

9. Answering paragraphs 17 through 19 of the complaint, insofar as the allegations thereof refer to defendant State of California, this answering defendant alleges that it has been in continual and lawful possession of the current bed of the Colorado River from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side, and with the sole exception of the foregoing, denies generally and specifically each and every allegation contained in those paragraphs. As to any allegations therein referring to any other defendant, the State of California has no knowledge or information sufficient to form a belief as to the truth or falsity thereof, and on that basis denies those allegations.

AFFIRMATIVE DEFENSE

1. Defendant State of California is a sovereign state of the United States of America.

2. At all times relevant herein and relative to the property in question, the Colorado River has been, was and is a navigable body of water.

3. Upon its admission to the Union, defendant State of California became vested with, and by virtue of its sovereignty now owns, title to the bed of the Colorado River along its current position in the vicinity of the property in question from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side. Such sovereign ownership is held in trust for

the people of the State of California.

4. As to any sovereign lands owned by the State of California and described in paragraph 3, above, which lands have been the subject of avulsive changes in the course of the Colorado River, defendant State of California remains vested with sovereign title to those lands which constitute the bed of the Colorado River in its last natural location from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side. Such sovereign ownership remains held in trust for the people of the State of California.

CROSS-CLAIM AGAINST MARTIN ROCK AND IRENE ROCK

For a cross-claim against cross-defendants Martin Rock and Irene Rock, cross-complainant State of California complains and alleges as follows:

1. Cross-claimant State of California incorporates by reference each and every allegation contained in paragraphs 1 through 4, inclusive, of its affirmative defense as if such allegations were set forth in full at this point.

2. Cross-defendants Martin Rock and Irene Rock claim an interest in the lands that are the subject of this action which interest is adverse to cross-complainant State of California. Cross-complainant is informed and believes, and upon such information and belief alleges, that cross-defendants Rocks' claim of title is founded upon their theory that certain avulsive forces have acted to change the location of the Colorado River in the vicinity of the lands in question. Cross-complainant further

alleges, on the same basis, that such cross-defendants claim that all or part of the subject property are lands formerly underlying the Colorado River which have been abandoned and exposed as a result of the above-described avulsive movements.

3. The claims of cross-defendants Rocks are without any merit whatsoever. Cross-complainant State of California is informed and believes, and upon such information and belief alleges, that no avulsive forces have acted in any way to alter the course of the Colorado River in the vicinity of the lands in this action. Cross-complainant further alleges that the Colorado River in that area is in a state of nature and that the subject lands have been and are owned by the plaintiff herein, United States of America, except as alleged in paragraph 2, above, of the answer to the First Cause of Action.

4. Should this court find and conclude, contrary to the foregoing, that one or more avulsive changes have taken place in the Colorado River's location in the vicinity of the property in question, any lands formerly underlying the River found to have been exposed and abandoned as a result thereof remain in the sovereign ownership of cross-complainant State of California, as alleged above, and remain subject to the public trust for the people of the State of California, as also alleged above.

WHEREFORE, defendant and cross-claimant State of California prays judgment as follows:

1. Establishing and declaring sovereign ownership in the State of California of the current bed of the Colorado River, in the vicinity of the lands in this

action, from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side;

2. Enjoining and barring forever the defendants and cross-defendants Martin Rock and Irene Rock from claiming any interest whatsoever in the current bed of the Colorado River in the vicinity of the lands in this action, from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side;
3. Establishing and declaring sovereign ownership in the State of California of those portions of the lands in this action which are within the bed of the Colorado River in its last natural position, from the centerline of the River to the high-water mark thereof on the California (westerly) side, in the event that this court finds and concludes that one or more avulsive changes have taken place in the course of the Colorado River in the vicinity of the property in question;
4. Enjoining and barring forever the defendants and cross-defendants Martin Rock and Irene Rock from claiming any interest whatsoever in any lands, within the bed of the Colorado River in its last natural position, from the centerline of the River to the ordinary high-water mark thereof on the California (westerly) side, which lands are found and concluded by the court to have been the subject of avulsive changes in the course of the Colorado River in the vicinity of the property in question;

5. For costs of suit herein;
6. For such other and further relief as the court may consider proper.

DATED: October 4, 1978

EVELLE J. YOUNGER,
Attorney General
N. GREGORY TAYLOR,
Assistant Attorney General
RICHARD P. YANG,
Deputy Attorney General

BY _____
RICHARD P. YANG

Attorneys for Defendant and Cross-complainant State of California

DEMETRIOU, DEL GUERCIO & LOVEJOY
RICHARD A. DEL GUERCIO
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(213) 624-8407

Attorneys for Defendants
Martin G. Rock and Irene E. Rock

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, *Plaintiff,* v. MARTIN G. ROCK and IRENE E. ROCK, husband and wife; STATE OF CALIFORNIA, *Defendants.* STATE OF CALIFORNIA *Cross-complainant,* v. MARTIN G. ROCK and IRENE E. ROCK, husband and wife, *Cross-defendants.*	No. CV 71-0262-FW ANSWER OF DEFENDANTS MARTIN G. ROCK AND IRENE E. ROCK TO CROSS-CLAIM OF STATE OF CALIFORNIA

Defendants MARTIN G. ROCK and IRENE E. ROCK answer the cross-claim of defendant STATE OF CALIFORNIA as follows:

1. In answer to the allegations of paragraph 1, admit that "defendant State of California is a sovereign state of the United States of America" and admit that "At all

times relevant herein and relative to the property in question, the Colorado River has been, was and is a navigable body of water"; and, except as specifically admitted, deny generally and specifically each and every other allegation contained therein.

2. In answer to the allegations of paragraph 2, admit that "Cross-defendants Martin Rock and Irene Rock claim an interest in the lands that are the subject of this action which interest is adverse to cross-complainant State of California"; and, except as specifically admitted, deny generally and specifically each and every other allegation contained therein.

3. In answer to the allegations of paragraph 3, deny generally and specifically each and every allegation contained therein.

4. In answer to the allegations of paragraph 4, deny generally and specifically each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

5. The counterclaim of the State of California fails to state a claim against defendants Martin G. Rock and Irene E. Rock upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

6. The answer, affirmative defenses, and counterclaim of the State of California do not state a legal defense to the complaint of the United States in that the State of California does not deny the allegations of the complaint at paragraph 3, "That during all times herein mentioned, plaintiff has been, and now is, the owner of the real property and premises situate in the County of San Bernardino, State of California, and described as follows:

> "Lots 3, 4 and the Northwest One-Quarter of the Northwest One-Quarter of Section 36, Township 2 North, Range 26 East, S.B.M., together with any accretions thereto".

THIRD AFFIRMATIVE DEFENSE

7. This Court lacks jurisdiction over the subject matter of the claim of the State of California that it has superior title to the defendants Martin G. Rock and Irene E. Rock in that said defendants are citizens and residents of the State of California.

FOURTH AFFIRMATIVE DEFENSE

8. The claim of the State of California is barred by laches in that the defendants Martin G. Rock and Irene E. Rock have, for more than 20 years past, occupied and improved the lands which are the subject of this action and have paid all taxes levied thereon and have claimed said lands exclusively to the world including the State of California. The State of California has been aware of said claims and has heretofore publicly disclaimed any inter-

est in said lands and has heretofore failed and refused to assert an interest in said lands notwithstanding its knowledge of defendants' claims thereto.

FIFTH AFFIRMATIVE DEFENSE

9. The claims of the State of California are barred by the periods of limitations of actions set forth in the California Code of Civil Procedure, sections 315, 317, 336, 338(2), 343, and 345.

SIXTH AFFIRMATIVE DEFENSE

10. The claims of the State of California to ownership of an interest in the lands described in the complaint may not be asserted in this action by reason of the application of the doctrines of res judicata and collateral estoppel to the prior judicial determinations in the following cases:

United States v. Gossett (9th Cir. 1969), 416 F. 2d 565 (277 F. Supp. 11);
United States v. Clyde E. Rider, et ux., Civil No. 64-1826-HW, U.S. District Court, Central District of California;
United States v. Harry M. Apperson, et ux., Civil No. 64-1807-HW, U.S. District Court, Central District of California;
United States v. Carroll A. Cook, et ux., Civil No. 65-1003-HW, U.S. District Court, Central District of California

SEVENTH AFFIRMATIVE DEFENSE

11. The State of California does not claim or assert, and does not have, any interest in the lands comprising

Sections 35 and 36, Township 2 North, Range 26 East, San Bernardino Meridian, San Bernardino County, California.

WHEREFORE, these defendants pray that the State of California take nothing by its counterclaim.

DEMETRIOU, DEL GUERCIO & LOVEJOY
RICHARD A. DEL GUERCIO
WILLIAM M. RAMSEYER

By _____
Richard A. Del Guercio
Attorneys for Defendants
Martin G. Rock and Irene E. Rock

STATUTES

Federal Rules of Civil Procedure, Rule 54:

(a) Definition; form.

"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties.

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for Judgment.

A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the

party has not demanded such relief in his pleadings.

(d) Costs.

Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

Federal Rules of Civil Procedure, Rule 15(b):

(b) Amendments to Conform to the Evidence.

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.